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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6
7 UNITED STATES OF AMERICA,

Case No. 2:15-cr-00249-JCM-NJK

8 Plaintiff,

ORDER

9 v.

10 JOSHUA FORBES CALHOUN,

11 Defendant.

12
13 Presently before the court is defendant Joshua Forbes Calhoun's ("Calhoun") motion for
14 certificate of appealability. (ECF No. 78). The government has not filed a response.

15 The controlling statute in determining whether to issue a certificate of appealability is 28
16 U.S.C. § 2253, which provides as follows:

17 (a) In a habeas corpus proceeding or a proceeding under section 2255 before
18 a district judge, the final order shall be subject to review, on appeal, by the
court of appeals for the circuit in which the proceeding is held.

19 (b) There shall be no right of appeal from a final order in a proceeding to
20 test the validity of a warrant to remove to another district or place for
21 commitment or trial a person charged with a criminal offense against the
United States, or to test the validity of such person's detention pending
removal proceedings.

22 (c)

23 (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

24 (A) the final order in a habeas corpus proceeding in which
25 the detention complained of arises out of process issued
by a State court; or

26 (B) the final order in a proceeding under section 2255.

27 (2) A certificate of appealability may issue under paragraph (1) only
28 if the applicant has made a substantial showing of the denial of a
constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253.

Under § 2253, the court may issue a certificate of appealability only when a movant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the movant must establish that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

The court finds that Calhoun has not made the required substantial showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. Instead, Calhoun merely states that each of his claims denied by the court’s March, 2018 order (ECF No. 74) present issues that are “adequate to deserve encouragement to proceed further” or are clearly “debatable among jurists of reason that a court could resolve in a different manner.” Such brief and conclusory restatements of the law, without supporting facts, are insufficient to warrant of certification of appealability.

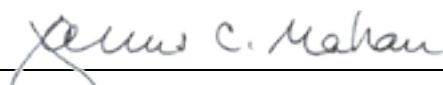
Reasonable jurists would not find the court’s determination that Calhoun is not entitled to relief under § 2255 debatable, wrong, or deserving of encouragement to proceed further. Accordingly, the court declines to issue a certificate of appealability.

I. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Joshua Forbes Calhoun’s motion for certificate of appealability (ECF No. 78) be, and the same hereby is, DENIED.

DATED THIS 17th day of April, 2018.



JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE